

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

THOMPSON FALLS CLASSIFIED)	
EMPLOYEES ASSOCIATION, MEA/NEA,)	
)	
Appellant,)	
)	OSPI 206-92
vs.)	
)	
BOARD OF TRUSTEES, THOMPSON FALLS)	<u>DECISION AND ORDER</u>
SCHOOL DISTRICT (SANDERS COUNTY)	
SCHOOL DISTRICT NO. 2),)	
)	
Respondent.)	

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PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

Appellant, Thompson Falls Classified Employees Association, MEA/NEA (the Association) and Respondent, Board of Trustees, Thompson Falls School District No. 2 (the District) are parties to a collective bargaining agreement covering the District's classified employees. In August, 1991, three custodians, represented by the Association, were transferred by the District from the school buildings they had been cleaning to different buildings. The Association contended that the District violated the collective bargaining agreement in transferring the custodians and filed an appeal with the Sanders County Superintendent of Schools under § 20-3-210, MCA. The Sanders County Superintendent contracted with the Missoula County Superintendent to serve as hearing officer in the appeal.

The County Superintendent held a hearing on February 6, 1992, and issued her Findings of Fact, Conclusions of Law and Order on

April 10, 1992. The County Superintendent concluded the District had violated the terms of the collective bargaining agreement and ordered the following remedy:

"Prior to making assignments and transfers of custodians for the 1992-1993 school year, Respondent shall take into account the qualifications, seniority, and desires of the employees to be transferred or reassigned."

The Association then filed a Motion for Rehearing or Reconsideration, contending that the remedy ordered by the County Superintendent failed to remedy the violation of the collective bargaining agreement (CBA) in that the custodians were not returned to the assignments they held prior to the violation of the contract. The order left the custodians with the building assignments which were made by the District when it violated the terms of the CBA. The Association requested an order returning the custodians to the status quo ante, prior to the contract violation. On April 29, 1992, the County Superintendent denied the Motion for Reconsideration stating: "The remedy is beyond the powers of the hearing officer." The Association then appealed this matter to the State Superintendent.

The issue on appeal is: Whether the County Superintendent's denial of the Motion for Reconsideration was affected by error of law.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. In reviewing

conclusions of law, the standard is to determine whether the interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990). The State Superintendent may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings of fact, conclusions of law and order are arbitrary or capricious or characterized by abuse of discretion, or clearly unwarranted exercise of discretion, or affected by error of law.

DECISION AND ORDER

The County Superintendent's conclusion of law that she did not have the power to fashion the remedy requested by the Association is affected by error of law and is HEREBY REVERSED.

The ORDER of the County Superintendent is HEREBY MODIFIED as follows:

Custodians working in the District on or about August 21, 1991, who are still employed in the District shall be reinstated to the building assignment each held prior to implementation of Principal Gary Morehouse's rotation plan. Any reassignment or transfer of these custodians will be in accordance with the terms of the Collective Bargaining Agreement effective on the date of the County Superintendent's ORDER -- April 10, 1992.

MEMORANDUM OPINION

The County Superintendent's jurisdiction in this case is derived from the terms of the CBA negotiated between Thompson Falls School District No. 2 and the Thompson Falls Classified Employees Association. County superintendents have jurisdiction to interpret and apply the terms of a CBA. Frazer Education Association, MEA/NEA v. Board of Trustees, Valley County Elementary School

District No. 2 and High School District No. 2B, 846 P.2d 267, 256 Mont. 223, 50 St.Rep. 41, 12 Ed. Law 1 (1993).

The relevant language of the CBA states:

19.1 Term.

All provisions of this Agreement shall be effective when finally ratified by both parties, and shall continue in effect until June 30, 1992.

4.10 Work Schedules

The District shall retain the right to set work schedules based upon the needs of the District.

5.1 Assignments/Transfers

The Board may make assignments and transfers of employees. Said assignments and transfers shall be made after taking into account the qualifications, seniority, and desires of the employee(s) to be transferred or reassigned.

ARTICLE XIII - MANAGEMENT RIGHTS

It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities, properties and activities of its employees. The Board retains all functions and rights not specifically limited by this Agreement.

The County Superintendent held in Conclusion of Law No. 6 that: "The transfers or reassignments were made prior to taking into account the qualifications, seniority, and desires of the employees to be transferred or reassigned and is therefore a violation of the CBA, Article 5.1."

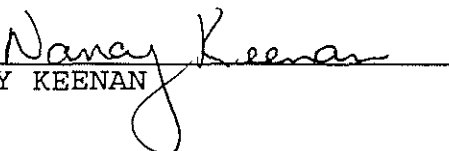
At issue in this appeal is whether, having made Conclusion of Law No. 6, the County Superintendent provided an appropriate remedy in her ORDER, which stated:

"Prior to making assignments and transfers of custodians for the 1992-1993 school year, Respondent shall take into account the qualifications, seniority, and desires of the employees to be transferred or reassigned."

It is this Superintendent's conclusion that the County Superintendent's ORDER failed to remedy the District's violation of the terms of the CBA. The Association's Motion for Reconsideration or Rehearing was denied on the basis of the County Superintendent's conclusion of law that she lacked the power to require the District to return the custodians to the building each had cleaned prior to the District's violation of the CBA. A County superintendent has the power necessary to enforce the terms of the CBA. Frazer, supra. Such power includes the remedy of returning the aggrieved parties to the building assignments they held prior to violation of the CBA.

Such a remedy in no way usurps the authority of the Board of Trustees, it merely requires that the District honor the terms of the CBA that it negotiated with the Association. Once reinstated, the District is free to follow the terms of the negotiated CBA. This Superintendent agrees with the Association's contention that not to require the District to return the custodians to the assignments they held prior to the violation of the contract is, in effect, no remedy.

DATED this 2 day of February, 1994.


NANCY KEENAN


CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 2d day of February, 1994, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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